

Report No.	21-15
Decision Required	

MĀORI REPRESENTATION

1. PURPOSE

- 1.1. This report provides members with an overview of proposals to amend the legislation governing the establishment of local Māori representation, and its potential implications for Horizons' existing representation arrangements.

2. EXECUTIVE SUMMARY

- 2.1. Amendments to the **Local Electoral Act (LEA)** have changed the process for establishing Māori constituencies. The intent is to improve consistency between the processes for establishing both general and Māori constituencies. There is no longer any requirement or ability to conduct a binding poll of voters; the decision is councils' alone. The amendment applies retrospectively; that is, it removes both the option and requirement for a binding poll for decisions already made that relate to the 2022 local election.
- 2.2. Transitional provisions have also extended to 21 May 2021 the time available to make this decision so it would have effect for the 2022 election, or for councils to revisit decisions they made based on the assumption that a poll could be demanded or conducted voluntarily. This particularly affects councils that are already well along the pathway for considering whether to include Māori representation in their arrangements.
- 2.3. If established, voters on the Māori electoral roll vote in Māori constituencies and voters on the general roll in general constituencies. Provisions governing the process that follows a resolution to include Māori constituencies have not changed. A resolution to establish Māori constituencies would apply for the following two electoral periods.
- 2.4. A full representation review of the number of constituencies (general and Māori), their boundaries, the number of members overall and in each constituency, must be carried out. This process is prescribed in the LEA and must balance the region's identified communities of interest with ensuring their effective and fair representation.
- 2.5. The number of Māori representatives in a region is determined using a formula prescribed in the LEA, based on the proportion of Māori electoral population to general electoral population as estimated by Statistics NZ. In the Horizons Region, there would be 1 Māori elected member if Council consisted of 6-10 members, and 2 if there were 11-14 members.
- 2.6. A representation review involves a full public consultation process (including submissions and appeals); this does not preclude the need to engage widely and less formally with the region's communities, iwi and hapū. In this region, final arrangements are usually determined by the Local Government Commission.

3. RECOMMENDATION

That the Committee recommends that Council:

- a. receives the information contained in Report No. 21-15 and Annexes.

4. FINANCIAL IMPACT

- 4.1. There is no impact on existing budgets as a direct result of this report. However, if Council subsequently made a resolution to establish Māori constituencies for the 2022 local election, there are no resources currently allocated for the required community engagement and representation review process. The estimated cost of conducting a review is in the order of \$87,000 based on the budgets for 2022/23 – 2024/25; it is likely there would also be opportunity costs associated with diverting staff resource from their programmed work.
- 4.2. Following changes to representation arrangements, remuneration levels for elected members may be adjusted depending on whether the arrangement alters the number of representatives. This is because the governance remuneration pool is linked to the size of Council's governance role, not the number of elected members.

5. COMMUNITY ENGAGEMENT

- 5.1. Council would need to carry out a robust engagement process, with the region's hapū and iwi and Māori voters in particular, before and during any process to change current representation arrangements to establish Māori constituencies. Wider community engagement would be necessary to inform a full representation review if one were required.

6. SIGNIFICANT BUSINESS RISK IMPACT

- 6.1. No significant risks associated with the content of this report have been identified.

7. CLIMATE IMPACT STATEMENT

- 7.1. Including Māori constituencies in the region's electoral arrangements would facilitate inclusion of Māori world views and mātauranga Māori in decisions relating to climate change mitigation and adaptation.
- 7.2. Changes to the number or arrangement of elected members or constituencies could alter the volume of emissions resulting from personal travel arrangements; the extent of any change (increase or reduction) would be estimated if a definite proposal were developed.

8. BACKGROUND

- 8.1. The LEA sets out the processes for local authorities to establish and regularly review their representation arrangements – the number of elected representatives, the number of constituencies and their boundaries, and whether there should be Māori constituencies (or wards). Where Māori constituencies are in place, voters enrolled on the Māori electoral role vote for candidates in these constituencies and voters on the general role vote for general constituency candidates.
- 8.2. The LEA provisions governing the establishment of Māori representation in local government were amended in February 2021 by the Local Electoral (Māori Wards and Māori Constituencies) Amendment Act. The purpose of the amendments is to enable local authorities to establish Māori constituencies (and wards) in the same way they would establish general constituencies, by removing all mechanisms for binding polls (both citizen- and council-initiated).
- 8.3. Previously, the process for establishing Māori constituencies was significantly different to the process for general arrangements. Local authorities could do this by resolution or as a result of a poll of electors. However, any resolution (either to establish Māori constituencies or hold a poll) could be overturned by a poll of electors if at least 5 percent of the council's

- electors demanded it. Resolutions which were not followed by a poll and the results of polls applied for two electoral terms.
- 8.4. In contrast, the process for establishing general electoral arrangements does not include any mechanism for polls. Broadly, this process includes council making a proposal and carrying out a public consultation process; the decision can be appealed to the **Local Government Commission (LGC)**. These arrangements are reviewed at least every six years.
 - 8.5. As a result, in practice the poll provisions have effectively imposed a higher procedural standard for establishing Māori constituencies and wards. Between 2002 and 2019 only two councils have succeeded; seven councils have had resolutions countermanded by polls and seven council-initiated polls have resulted in votes against establishing Māori representatives. These polls generally have low participation rates (approximately 40 percent, on average).
 - 8.6. While Māori representation rates have improved across local government during the same period (13.5 percent, estimated by Local Government New Zealand), Māori are still generally under-represented in comparison to their proportion of population (16.5 percent). Other issues identified are associated with the cost of polls for local authorities; the tendency of the processes around polls to cause division and animosity in communities in a way that disproportionately affects Māori; and local authorities or iwi and hapū choosing not to support establishing Māori constituencies or wards to avoid these issues rather than out of consideration of the most appropriate arrangement. These barriers are seen as preventing some councils from utilising the LEA's representation mechanisms to assist in meeting their obligation to provide opportunities for Māori to contribute to decision-making processes under section 81 of the **Local Government Act (LGA)**, instead limiting participation to the level of engagement or consultation.
 - 8.7. The **Minister of Local Government (the Minister)** has also noted that a commonly reported reason for not voting in local elections is the lack of candidates voters can relate to. It is suggested that increasing the number of Māori candidates through the establishment of Māori constituencies and wards may assist in improving Māori voter turnout.
 - 8.8. The intent of the amendments includes correcting inequities between the processes, removing unfair provisions that are creating barriers to Māori participation in local government decision making. Alignment between the two processes is considered consistent with Te Tiriti o Waitangi / the Treaty of Waitangi, recognising the Crown / Māori relationship at the local level and utilising local government's duty to assist the Crown in meeting its obligations under Te Tiriti / the Treaty.
 - 8.9. Local Government New Zealand and Taituarā (previously known as the Society of Local Government Managers) have for some time sought alignment of the two processes from Government and supported the amendments.
 - 8.10. Further changes to align the representation review process for Māori and general constituencies have been signalled by the Minister for consideration later this year. The primary rationale for the two stage process and the speed of stage one was to remove the barriers caused by the poll provisions and pre-empt the 22 February deadline associated with poll requirements that would affect arrangements for the 2022 and 2025 local elections. This is particularly the case for councils that were already well down the pathway towards including Māori representation.
 - 8.11. Of the regional councils, currently Bay of Plenty Regional Council and Waikato Regional Council have Māori constituencies. Northland Regional Council had resolved to establish Māori constituencies and Hawkes Bay Regional Council had resolved to hold a poll prior to the amendment legislation being introduced. In this region, Ruapehu District Council had resolved to establish Māori wards for 2022; previously Manawatū District Council's and

Palmerston North City Council's resolutions to establish Māori wards for 2019 were overturned by polls.

- 8.12. Council last considered whether to establish Māori constituencies in August 2017, prior to carrying out its six-yearly representation review for the 2019 local elections. At that time, it resolved not to establish Māori constituencies or conduct a poll in the region. Council could review that decision at any time; unlike the requirement to carry out a full representation review every six years it is not mandatory.

9. EFFECT OF THE AMENDMENTS

- 9.1. The amendments repeal all provisions relating to conducting polls on the establishment of Māori constituencies, with retrospective effect – that is, it applies to councils that had resolved or received demands to conduct a binding poll on the 2022 arrangements as well as applying to future decisions. They also create a transitional period for councils to make decisions relating to establishing Māori constituencies in sufficient time for the 2022 local elections, extending the deadline from 23 November 2020 until 21 May 2021. This includes allowing councils to revisit decisions already made on the assumption that the unamended provisions would apply.
- 9.2. Any decision made after 21 May (up to 23 November 2023) would apply to the 2025 local election. Decisions to establish Māori constituencies continue to apply for two elections, and remain in place unless a further resolution is made.
- 9.3. The process that must follow a decision to establish a Māori constituency has not changed as a result of these amendments and is set out in the next section. The ability for councils to hold a non-binding poll to seek community views is also still available.
- 9.4. The amendments do not affect Council's resolution in June 2020 to use the First Past the Post voting system for the 2022 and 2025 local elections.

10. PROCESS FOR ESTABLISHING A MĀORI CONSTITUENCY

- 10.1. Any decision to create Māori constituencies would have to be followed by a full review of representation arrangements to accommodate the additional constituencies. The process set out in the LEA is highly prescriptive and must be concluded within specified timeframes. Table 1 below shows the key process steps and deadlines that would be necessary for a decision to apply for the 2022 election. Indicative timeframes are shown in italics.

Table 1: Steps for establishing Māori constituencies for the 2022 local election

PROCESS STEP	TIMEFRAME / DEADLINE
Council resolves to establish Māori constituencies for the 2022 and 2025 elections	No later than 21 May 2021 (Schedule 1 clause 2(2))
Council determines its proposed representation arrangements <ul style="list-style-type: none"> • Number of elected members in total; • Number of members to be elected by voters in Māori and general constituencies respectively; • Names and boundaries of constituencies; and • Number of representatives in each constituency. 	No later than 31 August 2021 (Schedule 1A clause 3)
Public notice of initial proposal – submission period commences	Within 14 days of the decision and no later than 8 September 2021 (Section 19M(1))
Public consultation (submissions) period <i>If no submissions received the initial proposal become final</i>	At least 1 month following public notification of the initial proposal <i>[8 October 2021]</i> (Section 19M(2)(d))
Council considers any submissions, may make amendments, and notifies final proposal	Notification no later than 6 weeks following the close of submissions <i>[19 November 2021]</i> (Section 19N(1))
Appeals and objections period <i>If no appeals or objections received the proposal becomes final</i>	At least 1 month following public notification of the final proposal <i>[19 December 2021]</i> (Sections 19O and 19P)
Any appeals or objections forwarded to the LGC	As soon as practicable and no later than 15 January 2022 (Section 19Q)
LGC makes determination (subject to appeals to the High Court on points for law; 1 month appeal period)	Before 11 April 2022

10.2. As well as these key steps, members should note:

- i. In addition to the formal process steps, LGA provisions relating to community engagement and decision making apply;
- ii. Final proposals that do not comply with the fair representation threshold must also be forwarded to the LGC to determine the final arrangements. This threshold is intended to ensure that each elected member in a region represents a similar number of people, within ‘+/-10 percent’. Horizons’ proposals are not usually able to meet the threshold; and

- iii. The LGC does not have any ability to consider or change a council's decision to establish Māori constituencies but would consider the location or basis of boundaries (for example) as part of the wider arrangements.
- 10.3. Advice from officers during representation reviews would typically present a range of potential constituency arrangements using various configurations of boundaries. The relative ability of each scenario to meet the LEA requirements for arrangements to balance fair and effective representation of communities of interest, while also aligning constituency boundaries with existing territorial authority or ward boundaries as much as possible, would be assessed. This would include looking at the effect of altering the total number of elected members.
- 10.4. These scenarios often use indicative population estimates where they explore alternatives to existing constituency boundaries, because Statistics NZ bases its subnational estimates on units that do not always align. While this approach is adequate for a general discussion of relative scenarios, it may be necessary to commission Statistics NZ to prepare figures, particularly for sub-regional Māori electoral populations.

11. IMPLICATIONS OF ESTABLISHING MĀORI CONSTITUENCIES IN THE HORIZONS REGION

- 11.1. Considering whether to establish Māori constituencies during the transition period provided by the amendments is possible but would present some process challenges given that Horizons has not engaged with iwi and hapū, or communities in the region about its representation arrangements. Engagement would be necessary before officers could prepare advice to Council: with Māori electors in particular to gauge support for establishing Māori constituencies; and across the region's communities, iwi and stakeholders to ensure that consequential changes to the general constituencies will continue to provide fair and effective representation for the region's communities of interest. Resources (staff time and budget) have not been allocated to conduct a representation review prior to the 2022 election.
- 11.2. The LEA provides a population-based formula (using general and Māori electoral populations from Statistics New Zealand) to calculate the proportion of Māori members. Regional councils are permitted to have 6-14 elected members. In Horizons' case, there would be 1 Māori elected member if Council consisted of 6-10 members, and 2 if there were 11-14 members.
- 11.3. The Māori electoral population is not distributed evenly across the region's area. Table 2 (attached as **ANNEX A**) shows an indicative calculation of the changes to electoral population if two Māori elected members were added to the current constituency arrangements. In relation to each constituency's compliance with the fair representation (+/-10 percent) threshold, the range of non-compliance does not alter greatly except in the Ruapehu Constituency.
- 11.4. There has not been any engagement with Māori voters about where boundaries of any Māori constituencies should be. There could be a single constituency with two elected members, covering the entire region, or two constituencies each with one member. In 2017, officers used the indicative scenarios shown in Maps 1 and 2 (**ANNEX B and C** respectively) to provide some basis for discussion of the issues around identifying communities of interest and how they can be fairly and effectively represented. Both maps show two Māori constituencies; Map 1 uses the Rangitikei River as the boundary while Map 2 uses general constituency (and coinciding territorial authority) areas. Any firm proposal, including constituency names, should only be developed following robust engagement with Māori voters and the region's iwi and hapū.
- 11.5. In 2017, the distribution of the indicative Māori electoral population between Takiwā Kākāriki and Takiwā Kahurangi as shown on Map 1 would not have met the LEA +/-10 percent fair representation threshold; they would have been over- and under-represented

by 16 percent respectively. In contrast, the scenario shown on Map 2 would have been well within the threshold (2 percent under- and over-represented respectively).

- 11.6. The on-going and increasing significant non-compliance of the Ruapehu Constituency with the fair representation threshold has been justified, in part, on the basis that increasing the size of the area (for example to include part of the Whanganui District area) would jeopardise the effective representation of those communities. This includes constituents' ability to access their elected member and the member's ability to meet face to face with constituents. However, as Map 1 and 2 show, it is likely any Māori constituencies would include considerably larger areas. Members would need to consider whether an extensive revision of the general constituency arrangements in the north of the region should be adopted; this would need to be based on robust engagement with those communities, particularly their general electors, to ensure that unnatural groups or divisions of communities of interest were not created.

12. COMMENT

- 12.1. The option to establish Māori constituencies without the potential constraint of a binding poll to overturn the decision will provide greater process certainty around these decisions. However, it should be noted that once a resolution has been made, it is only the arrangement of general and Māori constituencies (number of constituencies and their boundaries) and the total number of elected members that would be available for consideration through the public consultation process. Broad engagement, particularly with Māori electors as those most affected, should be conducted to support decision-making to ensure Council is complying with the requirements of the LGA.
- 12.2. Establishment of Māori constituencies does not guarantee mana whenua representation as candidates could be from any iwi or hapū, not necessarily one that has its rohe within the constituency or region. Environment Canterbury noted in its submission on the Amendment Bill that even with its region falling entirely within the tribal takiwā of a single iwi, Ngāi Tahu, establishment of Māori constituencies would not guarantee election of a person of Ngāi Tahu descent, or a person answerable to Ngāi Tahu whānui. In Horizons' case, with more than 20 iwi with interests in the region, it is unlikely that one or two Māori elected members would be able to speak on behalf of all iwi and hapū. This is not unlike the situation with Parliamentary Māori representation.
- 12.3. Members should also note that the establishment of Māori constituencies would form part of council's broad and ongoing obligations in respect of its relationships with the region's iwi and hapū. It would not replace the existing day-to-day requirements to build strong, effective and respectful relationships with mana whenua in the region.

13. CONSULTATION

- 13.1. Consultation on the development of policy options and this legislation is the responsibility of central government. Consultation during the development phase was with five government agencies only and relied on previous stakeholder engagement. There was a brief (two days) public consultation period available to make a submission on the Amendment Bill to Parliament's Māori Affairs Committee.

14. NEXT STEPS

- 14.1. A second stage of reforms, to establish a new process for decisions on establishing Māori wards and constituencies, aligned with the current process for establishing general wards and constituencies, has been signalled. These reforms are expected to be enacted in time to apply following the 2022 election.

09 March 2021

15. SIGNIFICANCE

- 15.1. The decision to receive the information in this report is not a significant decision according to the Council's Policy on Significance and Engagement.
- 15.2. It should be noted that any decision whether to establish Māori constituencies is likely to be considered significant and would therefore require engagement to ensure the views of those affected, particularly Māori electors, are understood.

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ANNEXES

- A Table 2: Impact of Introducing Māori Constituencies on Current Arrangements (Compliance) with 'Fair Representation' Threshold
- B Map 1: Indicative Māori Constituencies
- C Map 2: Indicative Māori Constituencies